

FEB 26 2009

## BEFORE THE BOARD OF BARBER EXAMINERS

OCCUPATIONAL LICENSES

## STATE OF IDAHO

In the Matter of the License of:	)	
	)	Case No. BAR-2008-3
GINO GEORGE CALDERONE,	)	
License No. BR-228100,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW AND</b>
Respondent.	)	<b>RECOMMENDED ORDER</b>
	)	

Having reviewed the Complaint and other documents in this matter, the Hearing Officer hereby enters the following Findings of Fact, Conclusions of Law, and Recommended Order:

**FINDINGS OF FACT**

1. Gino George Calderone (hereinafter "Respondent") is licensed by the Idaho State Board of Barber Examiners (hereinafter "Board") under License No. BR-228100 to engage in the practice of barbering.

2. On November 25, 2008, a formal administrative Complaint was filed in this matter with the Board. Said Complaint is expressly incorporated herein and made a part hereof.

3. Copies of the Complaint, along with the Notification of Procedural Rights, were sent to Respondent on November 25, 2008, by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail to Respondent's address of record. On December 4, 2008, the documents were re-mailed to Respondent at the address provided by Respondent's wife:

Gino George Calderone  
951 W. Orange Grove Road, Apt. 27202  
Tucson, AZ 85704-4045

4. The certified mail return receipt indicates that the copy of the Complaint sent by certified mail was received at Respondent's address on December 11, 2008. In

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addition, the envelope containing a copy of the Complaint which was sent to Respondent by regular mail was not returned to the sending office.

5. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Complaint within twenty-one (21) days of service of the Complaint and that failure to timely file an Answer to the Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent's license without the necessity of conducting a hearing.

6. On Feb. 13, 2009, a Notice of Proposed Default Order and Default Order, along with another copy of the Complaint and Notification of Procedural Rights, were sent to Respondent by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, at the following address:

Gino George Calderone  
951 W. Orange Grove Road, Apt. 27202  
Tucson, AZ 85704-4045

7. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

8. Concurrent herewith, a Default Order was entered against Respondent. Therefore, the allegations contained in the Complaint on file in this matter are admitted as true without the necessity of conducting a hearing.

9. As detailed in the incorporated Complaint, Respondent did do the following:

a. On or about November 6, 1997, and December 12, 1997, Respondent was convicted of Theft, Possession/Use of Marijuana, Possession/Use of Drug Paraphernalia, and Unlawful Flight from Law Enforcement, all felonies, in State v. Calderone, Maricopa County Superior Court for the State of Arizona Case Nos. S-0700-

CR-199701222 and S-0700-CR-1997012290. Respondent was discharged from probation in those cases on February 11, 2003.

b. On or about February 18, 2005, Respondent submitted an Application for Barber or Barber Stylist Licensure to the Bureau of Occupational Licenses. On the Application, Respondent answered "No" to the question, "Have you ever been convicted of any State or Federal Felony?" As of that date, however, Respondent had been convicted of state felonies.

### **CONCLUSIONS OF LAW**

1. As a licensed barber in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 5, Idaho Code.

2. The Complaint was sent to Respondent at the most recent known address for Respondent. Respondent was duly and lawfully given notice of proceedings against his license pursuant to the provisions of IDAPA 04.11.01.055.

3. Respondent's failure to plead or otherwise defend in this action authorizes the Board, pursuant to Idaho Code § 67-5242(4) and IDAPA 04.11.01.700, to enter an Order of Default which is as lawful as if all the allegations in the Complaint were proved or admitted at a hearing.

4. Respondent's acts as described in the Complaint constitute grounds for discipline against Respondent's license to practice barbering under the laws governing the practice of barbering in the State of Idaho, specifically Idaho Code §§ 54-516(7) and 54-519(3) (Board may discipline a licensee for obtaining or attempting to obtain a license by fraudulent misrepresentation).

### **ORDER**

Based upon the foregoing, it is the recommendation of the Hearing Officer that the Board take such action as it deems appropriate consistent with the Findings of Fact and Conclusions of Law stated above.

/ / /

DATED this 25th day of February, 2009.



Jean R. Uranga  
Hearing Officer

### **NOTICE OF DUE PROCESS RIGHTS**

This is a recommended order of the Hearing Officer. It will not become final without action of the Board. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5243(3).

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

## CERTIFICATE OF SERVICE

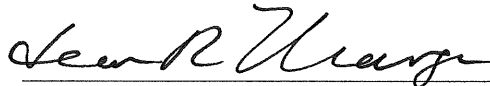
I HEREBY CERTIFY that on this 28th day of February, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Gino George Calderone  
951 W. Orange Grove Road, Apt. 27202  
Tucson, AZ 85704-4045

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Karin Magnelli  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Jean R. Uranga  
Hearing Officer